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Michael R. Long
Price, Heneveld, Cooper, DeWitt & Litton
695 Kenmoor SE
PO Box 2567
Grand Rapids, Michigan 49051

In re Application of :
GROSS et al. :
Application No.: 10/031,669 :
PCT No.: PCT/EP01/05514 :
Int. Filing Date: 15 May 2001 : DECISION ON PETITION
Priority Date: 17 May 2000 :
Attorney Docket No.: QUE04P310 :
For: DEVICE FOR CUTTING A STACK
CONSISTING OF SHEET-TYPE
MATERIALS

This is a decision on applicants' "Petition under 37 CFR 1.181 Requesting Withdrawal of Notification of Abandonment" filed 14 November 2003, which is being treated as petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 15 May 2001, applicants filed international application PCT/EP01/05514 which claimed a priority date of 17 May 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 22 November 2001. A Demand was filed for International Preliminary Examination prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 22 September 2001.

On 17 January 2002, applicants filed a Transmittal Letter for entry into the national stage accompanied, *inter alia*, by: the requisite basic national fee; a copy of the international application; a preliminary amendment and a unexecuted declaration.

On 29 January 2003, the United States Designated Office (DO/EO/US) mailed a Notification Missing Requirements under 35 CFR 371 (Form PCT/DO/EO/905) indicating that a signed oath/declaration of the inventors in compliance with 37 CFR 1.497(a) and (b) together with a surcharge payment were required. The notification set a two-month time limit in which to respond.

On 07 November 2003, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 29 January 2003 within the time period set therein.

On 14 November 2003, applicants filed the present petition which was accompanied, among other things: a copy of the declaration/power of attorney filed 31 March 2003 and a post card receipt dated 31 March 2003.

DISCUSSION

A. Petition under 37 CFR 1.181

A review of the present application reveals that the declaration and power of attorney in response to the Notice of Missing Requirements filed 31 March 2003 is not located therein. Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

"A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Here, applicants have provided a copy of their date-stamped filing receipt. The receipt identifies the application by applicants, title of invention, and serial/application number. The receipt itemizes declarations executed by the three joint-inventors. The receipt is stamped "Rec'd. PCT/PCT 31 MAR 2003" across its face is sufficient to indicate that the declaration and power of attorney was in fact received in the Office on 31 March 2003.

B. Defective Declaration

The declaration filed on 31 March 2003 is defective and is insufficient to satisfy the oath or declarations requirement of 35 CFR 371(c)(4) for entry into the national stage in the United States of America. Specifically, the declaration submitted includes an alteration that has not been initialed and dated by the second inventor. (See MPEP §605.04(a) and 37 CFR 1.52(c)) Additionally, the alteration made to the second inventor's name is not legible.

CONCLUSION

Applicants' petition under 37 CFR 1.181 is GRANTED. The holding of Abandonment is withdrawn.

If reconsideration of the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTH** from the mail date of this decision. A proper response must include a declaration in compliance with 37 CFR 1.497 executed by all of the named inventors. Any reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." No additional fee is required. Extensions of time under 37 CFR 1.136(a) are permitted.

Any further correspondence with respect to this matter should be addressed to:

Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in black ink that reads "Anthony Smith". The signature is written in a cursive style with a large, stylized "S" at the end.

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (703) 308-6314
Fax: (703) 308-6459